

EN BANC

[G.R. No. 186359, March 05, 2010]

JESUS O. TYPOCO, PETITIONER, VS. COMMISSION ON ELECTIONS; THE NEW MUNICIPAL BOARD OF CANVASSERS OF LABO, CAMARINES NORTE, REPRESENTED BY ITS CHAIRMAN, ATTY. RAFFY OLANO; THE NEW PROVINCIAL BOARD OF CANVASSERS OF CAMARINES NORTE, REPRESENTED BY ITS CHAIRMAN, ATTY. ALLEN FRANCIS B. ABAYA; AND EDGARDO A. TALLADO, RESPONDENTS.

D E C I S I O N

In *Tan v. Commission on Elections*^[1] (COMELEC), this Court emphasized that the factual findings of the poll body, which has the expertise in the enforcement and administration of all election laws and regulations, are binding on this Court and must be respected because this Court is not a trier of facts^[2] and is not equipped to receive evidence and determine the truth of factual allegations.^[3] While this principle may admit of rare exceptions, it should apply with full force to the instant case.

Before the Court is a petition for *certiorari* and prohibition assailing the April 30, 2008 Resolution^[4] of the COMELEC First Division and the February 24, 2009 Resolution^[5] of the COMELEC *en banc*.

The relevant antecedent facts and proceedings follow.

In the May 14, 2007 National and Local Elections, petitioner and private respondent vied for the position of Governor in Camarines Norte. After the counting and canvassing of votes, petitioner Jesus O. Typoco was proclaimed winner with 80,830 votes, as opposed to respondent Edgardo A. Tallado's 78,287 votes.^[6]

Respondent Tallado filed before the COMELEC a petition for correction of manifest error, docketed as SPC No. 07-312. He claimed that, after he reviewed and examined the figures in the Statement of Votes by Precinct (SOVP) vis-à-vis the Certificate of Canvass of Votes (COC) in the municipalities in the province, he found that, in the municipalities of Labo and Jose Panganiban, errors were committed in the transposition of votes from the SOVP to the COC. In Labo, the SOVP revealed that respondent Tallado's votes were 13,174 but when the figure was transferred to the COC, it was reduced to 11,490; whereas petitioner Typoco's votes were increased from 11,359 to 12,285. In Jose Panganiban, respondent Tallado's votes, per the SOVP, totaled 6,186; the same, however, was reduced to 5,460 when transposed to the COC. Respondent contended that if the errors were corrected, he would obtain a total of 80,697 votes and petitioner, 79,904 votes; thus, he would be the true winner in the gubernatorial race in the province.^[7]

In his Answer,^[8] petitioner asserted that respondent belatedly filed his petition for correction of manifest error and was guilty of forum shopping. Petitioner further countered that the SOVPs submitted by respondent were fake and obviously manufactured. Petitioner thus sought the dismissal of SPC No. 07-312.

After due proceedings, the COMELEC First Division, on April 30, 2008, rendered the assailed Resolution^[9] granting respondent Tallado's petition. It ruled that, based on the COMELEC copies (in the custody of the Election Records and Statistics Division [ERSD] of the Commission) of the concerned SOVPs and COCs, the votes in Labo, as recorded in the said documents, did not correspond; while those in Jose Panganiban actually tallied. Correcting the figures in Labo, while retaining those in the latter municipality, led to the following results: **Tallado, 79,969 votes**; and **Typoco, 79,904 votes**. The First Division then disposed of the case as follows:

WHEREFORE, premises considered, the Petition is hereby partially GRANTED. The proclamation of private respondent Jesus Typoco as the winning gubernatorial candidate is hereby ANNULLED. Consequently, a New Municipal Board of Canvassers for the Municipality of Labo, Camarines Norte and a New Provincial Board of Canvassers for the Province of Camarines Norte shall hereby be constituted.

The New Municipal Board of Canvassers for the Municipality of Labo, Camarines Norte is hereby DIRECTED to: 1. CONVENE at the Session Hall of the Main Office of the Commission on Elections in Manila; and, 2. CORRECT the manifest error found in the Municipal Certificate of Canvass of Votes of the Municipality of Labo to reflect therein the actual number of votes of petitioner and private respondent as recorded in the Comelec copy of the Statement of Votes by Precinct of the Municipality of Labo, Camarines Norte; 3. SUBMIT to the New Provincial Board of Canvassers the corrected Municipal Certificate of Canvass of Votes for the gubernatorial position, with its corresponding Statement of Votes and Summary Statement of Votes.

The New Provincial Board of Canvassers for the Province of Camarines Norte is also DIRECTED to: 1. CONVENE, at the same time as the New MBOC, at the Session Hall of the Main Office of the Commission on Elections in Manila; 2. RECEIVE from the New MBOC of Labo the corrected Municipal Certificate of Canvass of Votes for the gubernatorial position from the Municipality of Labo, Camarines Norte; 3. AMEND the Statement of Votes by City/Municipality for the Province of Camarines Norte reflecting therein the actual number of votes of the gubernatorial candidates as corrected in the Municipal Certificate of Canvass of Votes for the Municipality of Labo, Camarines Norte; 4. AMEND the Certificate of Canvass of Votes and Proclamation for the Province of Camarines Norte; and 5. PROCLAIM Edgardo A. Tallado as the winning gubernatorial candidate for the Province of Camarines Norte.

The Law Department is also DIRECTED to immediately conduct the investigation of the Chairmen and Members of the Provincial Board of Canvassers of Camarines Norte and the Municipal Board of Canvassers of Labo and Jose Panganiban, Camarines Norte and other individuals of

their possible involvement in the commission of electoral sabotage or any other election offense in the handling of the SOVP in the Municipality of Labo and Jose Panganiban, Camarines Norte.

SO ORDERED.^[10]

Aggrieved, petitioner moved for reconsideration.^[11] The motion was, however, denied by the COMELEC *en banc* in the further assailed February 24, 2009 Resolution.^[12]

Consequently, petitioner filed, on **March 2, 2009**, the instant petition for *certiorari* under Rules 64 and 65 of the Rules of Court to annul the aforesaid resolutions of the COMELEC. Apprehensive that the resolutions would be implemented, petitioner prayed for the issuance of an injunctive relief.^[13]

On the same date, the COMELEC *en banc* issued an Order,^[14] appointing the members of a new municipal board of canvassers in the subject locality and members of a new provincial board of canvassers for purposes of, respectively, tabulating the votes for Governor for the municipality of Labo, and proclaiming respondent. The dispositive portion of the March 2, 2009 Order reads:

WHEREFORE, premises considered, the Commission *en banc* RESOLVED to, as it hereby RESOLVES to, DENY the prayer of Private Respondent Jesus Typoco for admission of exhibits "1" to "8-G" for the specific purposes mentioned in the Memorandum.

Consequently, relative to our February 24, 2009 Resolution, and in order to expedite proceedings with (sic) speedily and judiciously, the Commission *en banc* accordingly names and appoints the following members of the New Municipal Board of Canvassers (NMBOC) for Labo, Camarines Norte: Atty. Raffy Olano (Chairman); Atty. John Rex Laudiangco (Vice Chairman); and Atty. Norie Tangaro-Casingal (Secretary), which must hereafter convene at COMELEC session hall in Intramuros, Manila within three (3) days from receipt of this Order, re-tabulate the votes for the position of Governor of Camarines Norte, prepare a new SVOP and MCOC for the municipality of Labo with the corrections, and thereafter submit the same to the New Provincial Board of Canvassers (NPBOC) of Camarines Norte.

The following are likewise named and appointed to the New Provincial Board of Canvassers of Camarines Norte and performed (sic) duties as follows: Atty. Allen Francis B. Abaya (Chairman); Atty. Manuel Lucero (Vice Chairman); and Fritzie Claire Casino (Secretary). The same NPBOC shall convene at COMELEC session hall in Intramuros, Manila within three (3) days from receipt of this Order, prepare a new Statement of Votes per Municipality (SVOM) and Provincial Canvass of Votes (PCOC) as corrected, and thereafter proclaim Edgardo Tallado as the duly elected governor of the province of Camarines Norte in the May 14, 2007 elections.

Further, the Commission *en banc* hereby endorses this matter to the National Bureau of Investigation (NBI) for proper investigation, the results of which would be material to any further action that may be taken against any such responsible parties who may be found liable for any of the fraudulent acts alleged by the Private Respondent Typoco. For this same purpose, the NBI is hereby directed to coordinate with the COMELEC Law Department and Atty. Romulo B. Macalintal to expedite this investigation.

SO ORDERED.^[15]

Significantly, the COMELEC, in the said March 2, 2009 Order, **endorsed the case to the National Bureau of Investigation (NBI) for proper investigation**, in view of petitioner's serious allegations that the pertinent election documents in the custody of the COMELEC were fake and spurious, and that COMELEC records were substituted in connivance with someone from the Commission.^[16] The obvious intent of this endorsement was to utilize the NBI findings as basis for appropriate action against those who perpetrated the alleged fraud if, indeed, fraud had been committed. Parenthetically, Commissioner Rene V. Sarmiento dissented from the majority opinion in the March 2, 2009 Order.^[17]

On **March 4, 2009**, petitioner filed with this Court his *Urgent Motion Reiterating the Prayer for the Issuance of a Temporary Restraining Order or Status Quo Order and/or Writ of Preliminary Injunction with Motion for Leave of Court to Implead Necessary Parties and to Set for Oral Arguments*,^[18] principally to stop the implementation of the aforesaid March 2, 2009 Order, and the earlier assailed resolutions of the COMELEC.

Finding merit in petitioner's urgent motion, the Court, on **March 5, 2009**, issued a temporary restraining order (TRO) for the concerned parties to **cease and desist from implementing the April 30, 2008 Resolution of the COMELEC First Division, the February 24, 2009 Resolution and the March 2, 2009 Order of the COMELEC en banc**.^[19]

On June 9, 2009, petitioner filed his *Motion for Leave of Court to File the Herein Incorporated Supplemental Arguments*,^[20] attaching thereto a copy of the May 22, 2009 Progress Report^[21] of the NBI. Petitioner contends in his motion that the NBI found the SOVPs in the possession of COMELEC to be spurious. On July 20, 2009, petitioner again moved for leave to incorporate his second supplemental arguments, attaching thereto the July 16, 2009 Final Report^[22] of the NBI. Apparently, the NBI conducted an investigation pursuant to the March 2, 2009 Order of the COMELEC *en banc*, despite this Court's issuance of a TRO.

Given these antecedents, the Court in the instant *certiorari* petition must resolve whether or not the COMELEC committed grave abuse of discretion in its issuances ordering: (1) the correction of the manifest error in the pertinent election documents; (2) the annulment of the proclamation of petitioner; and (3) the subsequent proclamation of the winning gubernatorial candidate in Camarines

Norte.

The Court finds that the COMELEC did not gravely abuse its discretion.

In a special civil action for *certiorari*, the burden rests on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent issuing the impugned order, decision or resolution.^[23] "Grave abuse of discretion" is such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction or excess thereof.^[24] It must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.^[25] **"Grave abuse of discretion" arises when a court or tribunal violates the Constitution, the law or existing jurisprudence.**^[26]

We find that the COMELEC, in ordering the correction of manifest errors in the SOVP and COC, merely exercised its bounden duty to ascertain the true will of the electorate of the province. Proven during the proceedings before it were errors or discrepancies in the recording or transferring of votes from the SOVP of Labo to the COC, such that the votes in the latter document did not reflect the true and correct votes received by the candidates. SOVPs are the basis of COCs;^[27] the two must jibe with each other. Certainly, an error in transposing the contents of one to the other only calls for a clerical act of reflecting in the said election documents the true and correct votes received by the candidates.^[28] **This does not involve the opening of the ballot boxes, examination and appreciation of ballots and/or election returns.** All that is required is to reconvene the board of canvassers for it to rectify the error it committed in order that the true will of the voters will be given effect.^[29] The previous proclamation of petitioner will not be a hindrance to the said correction. The proclamation and assumption of office of petitioner based on a faulty tabulation is flawed right from the very beginning, and may, therefore, be annulled.^[30]

These matters considered, the Court agrees with the following discourse of the COMELEC First Division:

After a thorough review of the ERSD copy of the Labo SOVP we have the following findings: the ERSD copy is a carbon copy of the SOVP submitted by Petitioner. In the ERSD copy of the SOVP petitioner received a total of Thirteen Thousand One Hundred Seventy Two (13,172), while private respondent received only Eleven Thousand Three Hundred Fifty-Nine (11,359) votes. Curiously, these figures did not find its way to the Summary SOV and the Municipal COC which are attached in the ERSD copy of the SOVP. The Summary SOV and the Municipal COC shows that petitioner's total number of votes in Labo is Eleven Thousand Four Hundred Ninety (11,490) votes while that of private respondent is Twelve Thousand Two Hundred Eighty Five (12,285) votes. Clearly, therefore, even in the ERSD copy of the SOVP there is manifest error in the transposition of the votes of petitioner from the SOVP to the Summary SOV and the Municipal COC. And between the Municipal COC and the SOVP, the SOVP should take precedence since the Municipal COC simply